once such proceedings are commenced the lands have to be sold by public auction. As far as I can remember, although I made no note of it at the time, the only reason why the second respondent wished to have the lands sold by private treaty was that he wished to avoid publicity and consequent disgrace to his family in the event of the lands being sold by public auction. That, to my mind, was no valid reason for acceding to his request.

On the application of the second respondent under Order 54 Rule 28 the matter was adjourned into Court for further argument on 10th June, 1963. On hearing the second respondent's arguments, I was satisfied that there was no ground upon which I could set aside the order made on 13th May, 1963.

*Order accordingly.*

Solicitors:—*Morris Edgar & Co.*

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## *RE* SEAH TIN TOON

**[A.Cr.J. (Wee Chong Jin C.J.) June 12, 1963]**

**[Singapore — Magistrate's Appeal No. 265 of 1962]**

*Industrial dispute—Strike—Setting up posters, banners, tables, chairs, etc. on five-foot-way—Whether there was unlawful obstruction or nuisance within the meaning of s. 96, Criminal Procedure Code (Cap. 132).*

*Criminal Procedure Code (Cap. 132, Chapters XXVIII and IX), ss. 96, 98, 99, 290—Unlawful obstruction or nuisance—Information laid by petitioner—Whether petitioner a party to proceedings—Whether there can be appeal from decision of District Court under s. 290—Whether Court should interfere with discretion of District Judge in such cases.*

On November 3, 1962, fifteen of the 32 employees of the Rendezvous Bar and Restaurant went on strike. The strikers put up posters, placards, flags, banners, tables, chairs, benches and stools on the five-foot-way of this restaurant. The majority of the strikers ate their meals on that portion of the five-foot-way and slept there at night. Besides the strikers a few members of the union of whom the strikers were members also slept on the five-foot-way to keep company with the strikers. The articles placed by the strikers on the five-foot-way in front of the restaurant were still there when the report and information was made on December 1, 1962 by the petitioner. The petitioner alleged that there was in existence such an unlawful obstruction or nuisance within the meaning of section 96 of the Criminal Procedure Code as to require the District Court to make a conditional order under that section. The learned District Judge found that the articles placed by the strikers on the five-foot-way did not completely obstruct it and that there was a clean passage for members of the public to pass and re-pass along it so that nothing more than a slight inconvenience of a temporary nature as far as the public was concerned was caused, there being no evidence at all of any serious injury or imminent danger to the general public.

The learned District Judge thus held that the petitioner had failed to show that the obstruction was an unlawful obstruction or nuisance within the meaning of section 96. On appeal by the petitioner,

**Held:** (1) the petitioner who lay the report or other information under section 96 of the Criminal Procedure Code could not be properly described as a party to the proceedings. He therefore had no right of appeal under section 290 of the Criminal Procedure Code because that section give a right of appeal only to a person who is a party to the proceedings;

(2) on the facts as found by the District Judge the Court ought not to interfere with the discretion exercised by the District Judge under section 96 of the Code.

MAGISTRATE'S APPEAL.

*A. P. Rajah* for the petitioner.

*T. S. Sinnathuray* (Crown Counsel) for the Crown.

*David Marshall* (*amicus curiae*).

*Cur. Adv. Vult.*

**Wee Chong Jin C.J.:** This is an appeal under the provisions of Chapter XXVIII of the Criminal Procedure Code against the refusal by the learned District Judge to make an order under section 96 on a Report and Information laid before him on the 1st December 1962 by the petitioner Seah Tin Toon.

The material provisions of the Criminal Procedure Code which relate to the subject matter of this appeal are contained in Chapter IX under the heading "Public Nuisances". Section 96 provides *inter alia* that "Whenever a District Court considers on receiving a report or other information and on taking such evidence, if any, as it thinks fit, that—

(a) any unlawful obstruction or nuisance should be removed from any way,.....which is or may be lawfully used by the public.....such Court may make a conditional order requiring the person or corporation causing such obstruction or nuisance.....within a time to be fixed in the order to—

(viii) appear before such Court at a time and place to be fixed by the order and move to have the order set aside or modified in manner hereinafter provided."

Section 98 provides that

"The person or corporation against whom such order is made shall—

(a) perform within the time specified in the order the act directed thereby; or

(b) appear in accordance with such order and show cause against the same."

Section 99 provides that

"If such person does not perform such act or appear and show cause as required by section 98 he shall be liable to the penalty prescribed in that behalf in section 188 of the Penal Code and the order shall be made absolute."

The material facts are as follows:—

On the morning of the 3rd November 1962 fifteen of thirty-two employees of the Rendezvous Bar and Restaurant of Nos. 4 and 5 Bras Basah

Road, Singapore went on strike. The strikers set up posters, placards, flags, banners, tables, chairs, benches and stools on the five-foot-way of this restaurant. The majority of the strikers eat their meals on this portion of the five-foot-way and sleep there at night. Besides the strikers a few members of the Union of whom the strikers are members also sleep on the said five-foot-way to keep company with the strikers. The articles placed by the strikers on the five-foot-way in front of this restaurant were still there when the Report and Information was made on the 1st December 1962.

On these facts the petitioner alleges that there is in existence such an unlawful obstruction or nuisance within the meaning of section 96 of the Criminal Procedure Code as to require the District Court to make a conditional order under the said section.

At the hearing of the appeal Mr. Marshall who appeared as *amicus curiae* drew the attention of the Court to section 290 of the Criminal Procedure Code and submitted that on the true construction of that section the petitioner had no right of appeal against the refusal by the learned District Judge to make an order under section 96.

Mr. Marshall's contention is that three conditions had to be satisfied before any person who is dissatisfied with any judgment sentence or order pronounced by any District Court or any Magistrate's Court may prefer an appeal to the High Court.

The first condition is that the appellant must be a party to the proceedings and Mr. Marshall's contention is that in a matter under section 96 of the Code the person who lays the report or other information does not thereby become a party to the proceedings.

The second condition is that the right of appeal given by section 290 of the Code lies only in respect of a criminal case or matter. This condition Mr. Marshall concedes is fulfilled in the case of proceedings under section 96 of the Code.

The third condition is that the right of appeal under section 290 lies in respect of *inter alia* an order made or pronounced by a District Court or a Magistrate's Court but not in respect of a refusal to make an order. Mr. Marshall however concedes that there have been decisions in our Courts that a refusal by a Court to make an order in a criminal case or matter can be the subject matter of an appeal.

I am of the opinion that Mr. Marshall's contention must prevail on the ground that section 290 gives the right of appeal only to a person who is a party to the proceedings. The person who lays the report or other information under section 96 is not in my opinion a person who may properly be described as a party to the proceedings. He has no rights in the matter beyond the right of any member of the public to bring to the attention of a District Court, by way of a report or other information, the existence of a state of affairs on which the Court may act under Chapter IX of the Code.

However the record of the proceedings in the Court below having come before this Court, I can enquire into the matter under the power of revision given by section 311.

The facts as set out in the petitioner's report and information clearly indicate that the alleged unlawful obstruction or nuisance came into existence as a result of a trade dispute between the petitioner and some of his employees. Resulting from this trade dispute fifteen of the employees went on strike and the strikers' trade union took industrial action by way of picketing.

After visiting the *locus in quo* at the invitation of the petitioner and in the presence of his counsel the learned District Judge refused to make a conditional order under section 96.

So far as the facts of the matter are concerned the learned District Judge found that the articles placed by the strikers on the five-foot-way did not completely obstruct it and there was a clear passage for members of the public to pass and re-pass along it so that in his opinion nothing more than a slight inconvenience of a temporary nature as far as the public is concerned was caused by these articles, there being no evidence at all of any serious injury or imminent danger to the general public. On those facts he came to the conclusion that the petitioner had failed to show that the obstruction was an unlawful obstruction or nuisance within the meaning of section 96 and that such obstruction or nuisance should, in the circumstances of the case, be dealt with under that section.

On the facts as found by the learned District Judge, it seems to me that a Court exercising appellate powers ought not to interfere with the discretion exercised and conferred on him by section 96. Having come to the conclusion that the obstruction or nuisance complained of was such as not to warrant the exercise of the discretion conferred on him the matter must end there unless it can be shown that he acted on some wrong principle of law.

In his written judgment the learned District Judge took the view that Chapter IX of the Criminal Procedure Code was not intended for the redressing of wrongs for which other remedies were available nor was it intended to enable a complainant to obtain by summary criminal process what he was not willing to obtain in a

civil court. He also took the view that unless there was proof of serious injury or imminent danger to the general public interest it was not proper to invoke the aid of this Chapter. I agree with those views but would add that in my opinion the overriding consideration must always be the public interest.

I have therefore come to the conclusion that this is not a fit matter for me to interfere.

*Order accordingly.*

Solicitors:—*Tan, Rajah & Cheah.*

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## SEOW PENG KUAN v. REGINA

[A.Cr.J. (Winslow J.) June 19, 1963]

[Singapore — Magistrate's Appeal No. 42 of 1963]

*Customs and Excise—Possession of dutiable samsu —Customs Ordinance, 1960, s.113—Accused leaning against car containing tins of samsu—Finger-prints of accused on rear window of same car—Whether possession proved.*

Possession of dutiable samsu under section 113 of the Customs Ordinance is not proved by evidence showing that the accused was leaning against the car in which the dutiable samsu was found and that his finger-prints were on the rear window of the car.

MAGISTRATE'S CRIMINAL APPEAL.

*S. H. D. Elias* for the appellant.

*Donald Yeo* for the Crown.

**Winslow J.** (delivering oral judgment): In this appeal against his conviction on a charge of possessing dutiable samsu under section 113 of the Customs Ordinance (No. 44 of 1960) the main evidence against the appellant is that he was leaning against the car which was later found to contain certain tins of samsu. His finger prints were found on the rear window of the car. Even giving the prosecution every benefit with regard to the finding of these prints, to wit, that they were impressed on that window prior to the arrival of the police and not after he was handcuffed and placed inside the car, there is very little either in his circumstance or otherwise to connect the appellant with the samsu which was found in the boot of the car and the other package found on the front seat. The circumstances are extremely suspicious but I do not think possession of the samsu has been proved as it should have been proved. In the circumstances the appeal is allowed and the conviction quashed.

*Appeal allowed.*

Solicitors:—*Elias Bros.*

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## YAT YUEN HONG CO. LTD. v. SHERIDAN-LEA & ANOR.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Buttrose JJ.)

June 24, 1963]

[Singapore — Civil Appeal No. 2 of 1963]

*Tort—Escape of filled earth—Damage caused by—"Non-natural use" of land—Rule in Rylands v. Fletcher —Whether applicable.*

The appellants, land developers, were at the material dates developing their land which was adjacent to and on a higher level than the respondents' nursery garden. The appellants had filled with earth the slope and this filled earth slipped during a heavy rain on the night of August 28, 1958, as a result of which part of the retaining wall collapsed on the respondents' land and destroyed their plants, fencing, bower, stands and other equipment. In the Court below Chua J. held that the defendants were liable because in his view "to pile loose earth on a steep slope so that more flat land would be available for the house is 'non-natural use' of the land and the defendants having placed an artificial mass in a dangerous position are responsible for the consequences." On appeal it was contended that the learned trial Judge was wrong in law in holding that the doctrine of *Rylands* v. *Fletcher* applied.

**Held:** to pile loose earth on a steep slope so that more flat land would be available is "non-natural use" of the land and, therefore in this case the appellants were liable under the rule in *Rylands* v. *Fletcher.*

*Cases referred to:—*

(1) *Rylands* v. *Fletcher* (1868) L.R. 3 H.L. 330.

(2) *Ilford Urban Council* v. *Beal* [1925] 1 K.B. 671.

(3) *Nichols* v. *Marsland* (1875) L.R. 10 Ex. 255.

(4) *St. Anne's Well Brewery Co.* v. *Roberts & Ors.* 44 T.L.R. 703.

(5) *Wilkins* v. *Leighton* [1932] All E.R. Rep. 55.

(6) *Attorney-General* v. *Cory Bros. & Co.* [1921] A.C. 521.

(7) *Read* v. *Lyons* [1947] A.C. 156.

(8) *Hale* v. *Jennings Bros.* [1938] 1 All E.R. 579.

(9) *Jones* v. *The Festiniog Railway Co.* (1868) 3 Q.B. 733.

(10) *Halsey* v. *Esso Petroleum Co. Ltd.* [1961] 1 W.L.R. 683.

COURT OF APPEAL.

*L. A. J. Smith* for the appellants.

*J. E. Lloyd* for the respondent.

*Cur. Adv. Vult.*

**Wee Chong Jin C.J.:** This is an appeal from the judgment of Chua J. in favour of the plaintiffs' claim for damage to property which belonged to them as partners in the business of nursery gardeners carried on by them at No. 10 Binjai Park, Singapore. The damage was caused by the escape of filled earth from the defendants' land.